IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

RCRev..No. 71 of 2006(F)

RCA.52/2003 of DISTRICT COURT, MANJERI
RCP.32/2001 of MUNSIFF COURT, TIRUR
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: PETITIONERS:
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1. ANDIYAM KULANGARA USMAN,
THALAKKAD AMSOM, THEVALAPPURAM DESOM,
P.O. B.P. ANGADI, TIRUR TALUK,
MALAPPURAM DISTRICT.

2. ANDIYAM MULANGARA RAFEEQ,
THALAKKAD AMSOM, THEVALAPPLURAM DESOM,
P.O.B.P. ANGADI, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.V.S.ROBIN

RESPONDENTS: APPELLANT/PETITIONER:

CHUNDAN VEETTIL PAAZHAVA OTTAYIL
MUHAMMED BASHEER, THALAKKAD AMSOM,
THEVALAPPURAM DESOM, P.O.B.P. ANGADI,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON 25/10/2007 PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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necessary for his business. The tenants resisted the bonafide need contending that it is only a mere desire and is not a genuine bonafide need at all. It is also contended that the landlord is having landed properties and therefore has other sources of income. They pleaded that they are mainly depending on the income derived from the shop room for their livelihood and there are no other vacant convenient rooms available in the locality to shift the business.

3. The Rent Control Court refused to grant eviction under Section 11 (3) mainly for three reasons. The said court was of the view that though R.C.P.No.36/2000 was allowed in favour of the landlord, he has not taken any steps to evict the tenant in occupation of that room and it shows that the plea of bonafide need set up by the landlord is untrue. The other reason stated by the Rent Control Court was that the nature of the business intended to be started by the landlord, is not at all pleaded by him. Again, by referring to his oral evidence, it was held by the Rent Control Court that it is only a pretext for eviction and that the plea raised is only a superfluous one and he had not taken any steps to start the business in the other room, as already noticed.

4. The Appellate Authority, after an elaborate consideration of the evidence, found that the said reasoning adopted by the Rent Control Court

is not correct. Regarding the non-execution of the order of eviction in R.C.P.No.36/2000, the Appellate Authority, on a reference to the documents produced in the case, found that the said R.C.P. was allowed on 30.7.2002 by the Rent Control Court and the appeal preferred by the tenant was dismissed on 24.2.2003. The matter was taken up in revision, C.R.P.No.952/2003 before this court by the tenant, while E.P.No.33/2003 was pending before the execution court and there was a stay also. After the C.R.P. was disposed of on 4.8.2003, the building was surrendered to the landlord on 7.1.2004. Therefore, the Appellate Authority, on a reference to Exts.A5 and A6, found that the finding rendered by the Rent Control Court on that aspect is incorrect. Regarding the nature of business also, the Appellate Authority was of the view that a reading of the oral evidence shows that he has stated that his intention is to start a business in stationery and foot wear and therefore the same is sufficient to establish the bonafide need. Therefore, on these grounds the prayer for eviction was allowed under Section 11(3) of the Act also.

5. Learned counsel for the petitioners argued that the approach made by the Appellate Authority is not correct. According to him, the landlord, to establish his bonafides, has not started any business so far in the room which was surrendered pursuant to the order of eviction in

R.C.P.No.36/2000. Since the said room was available, the matter should have been considered under Section 11(8) of the Act, i.e., additional accommodation. To substantiate the said contention, the petitioners have filed an additional affidavit producing the orders in R.C.P.No.32/2001, that of the Appellate Authority in R.C.A. No.52/2003 and the order in C.R.P.No.952/2003. Learned counsel therefore contended that the view taken by the Rent Control Court is correct. It was also argued that in the petition for eviction, the nature of the business is not pointed out by the landlord and in the proof affidavit also, that is not elaborated. He was employed in Gulf countries and has no experience to conduct business. It was also further argued that an over all reading of the oral evidence will show that the landlord has not been successful in establishing a genuine need for getting eviction of the building. It is therefore submitted that the Appellate Authority was not right in ordering eviction.

6. Learned counsel also relied upon the decisions of this court reported in **Lakshmi v. Labbah Kunju Ameer Hamsa** (2005 (3) KLT 627) and **Mymoon v. Dunlop India Ltd.** (2007 (2) KLT SN 37) and that of the Apex Court in **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta** ((1999) 6 SCC 222) to contend for the position that the claim has to be assessed

objectively and unless there is a genuine need, eviction cannot be ordered.

7. Learned counsel for the landlord, on a reference to the pleadings and evidence, submitted that he has clearly spoken to about the purpose to start a business, i.e., to conduct stationary and foot wear business, in the cross examination and a reading of the oral evidence in its entirety will show that his need stands established. Relying upon the decision of a Division Bench of this court, which was followed by the Appellate Authority, reported in **Narayani v. District Judge** (1991 (1) KLT 646), it is submitted that the precise nature of the business proposed to be conducted is not required to be stated in the pleading.

8. We will refer to the short facts in the light of these arguments. The landlord was aged about 30 at the time of filing the application. He had been to Gulf countries in 1991 and was working as a salesman. He returned back to India in the year 1995 as he did not gain financially and his visa stands cancelled. He is depending on his family for his livelihood. The shop room in question and the southern side shop room involved in R.C.P.No.36/2000 are required for his business purposes. The business proposed is stationary and foot wear. The facts which emerge from the pleadings and the evidence shows that in R.C.P.No.36/2000, the eviction was ordered which was challenged in appeal and revision by the tenant

therein. Ultimately, C.R.P.No.952/2003 was disposed of on 4.8.2003, wherein this court had granted time till 31.12.2003 to the tenant therein to vacate the premises. The said premises was surrendered on 7.1.2004. Therefore, as rightly held by the Rent Control Appellate Authority, the finding by the Rent Control Court that the tenant had not taken any steps to get delivery of the building, is totally erroneous. In fact, a reading of the order of the Rent Control Court shows that a finding was rendered against the landlord that the bonafide need is untrue, based on the reasoning adopted that the landlord had not taken any steps to evict the tenant in R.C.P.No.36/2000. Apart from the above, the other finding is that the nature and character of the business has not been spoken to by the landlord. As rightly held by the appellate authority, going by the decision in **Narayani v. District Judge (**1991 (1) KLT 646), the precise nature of the business proposed to be conducted, is not to be stated in the pleadings. Learned counsel for the landlord pointed out that in his deposition, the landlord has clearly stated that the proposed business is one in stationary and foot wear. It is not the requirement of the law that all the details of the proposed business should be pleaded by the landlord to establish the bonafide need. From the circumstances pleaded and the situation arising, it should be clear from the evidence that there is a genuine need for the

landlord to get the building surrendered. In view of the fact that he has no avocation in life, that there are no other building for him to do the business and coupled with the fact that he has already obtained eviction of the room in R.C.P.No.36/2000 and the requirement of the petition schedule room was also sought for conducting business, we are satisfied that the need put forth by the landlord is genuine. Therefore, the contentions raised otherwise by the learned counsel for the petitioner are without any merit.

9. The other argument raised is that actually the plea should have been considered under Section 11(8) of the Act and not under Section 11(3) of the Act. It is not disputed that the landlord was not in occupation or was conducting any business at the time when the eviction petition was filed. The eviction petition herein is filed in the year 2001 and R.C.P. No.36/2000 was allowed by the Rent Control Court only by order dated 30.7.2002. Therefore, we are at a loss to understand as to how the eviction petition should have been one filed under Section 11(8) and not under Section 11(3) of the Act. Section 11(8) applies in a case where the landlord who is occupying only a part of the building seeks eviction of the tenant who is occupying the whole or any portion of the remaining part of the building. The tenant has not raised such a plea either in the counter statement or in the arguments before the Rent Control Court or the Appellate Authority. Of

course, learned counsel submitted that being a legal issue, that can be raised in this revision petition. But even while considering the said plea on merits, we are satisfied that such an element is not one that arises from the facts set up by the petitioners herein. Therefore, that contention is also without any merit.

10. The Appellate Authority has also found that the tenants have not raised any contention that the petition is one filed without any bonafides and is a ruse to evict the tenants. Learned counsel for the petitioners have raised objections to this finding based on the fact that the landlord in his evidence, has stated that he filed the application for eviction as the tenants have not been paying rent for 8 – 9 months. A reading of the written objection filed by the tenants before the Rent Control Court evidences the fact that no such contention was raised. We find that the observation made by the Appellate Authority in this regard, is also correct. Merely because the landlord stated in his deposition that he finally decided to file an eviction petition as there was no payment of rent for 8 – 9 months, that will not defeat his plea. Further, there is a ground under Section 11(2) of the Act also. Therefore, nothing turns upon that argument. As regards the second proviso to Section 11(3) of the Act, there is a clear finding that the tenants are not depending on the income from the business for their livelihood and

that there are other accommodation available in the locality. The findings on this aspect do not suffer from any infirmities. It is well settled that the burden is on the tenant to prove such facts.

12. For all these reasons, the revision petition fails and the same is accordingly dismissed.

We grant six months' time from today to the petitioners to vacate the premises on condition that they file an unconditional undertaking in the form of an affidavit agreeing to vacate the premises within six months from today. They shall pay the arrears of rent, if any, and shall continue to pay the monthly rent till the room is vacated. The undertaking shall be filed before the execution court within three weeks from today.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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